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Summary record of the 24th meeting
Held at Headquarters, New York, on Wednesday, 26 October 2005, at 10 a.m.

Chairman: Mr. Butagira ..... (Uganda)
later: Mr. Anshor (Vice-Chairman) ..... (Indonesia)

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* Items which the Committee has decided to consider together.

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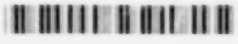

The meeting was called to order at 10.10 a.m.

Agenda item 71: Human rights questions (*continued*) (A/60/40, 44, 129, 336 and 392 and A/60/408-S/2005/626)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/60/134, 266, 272, 286, 299, 301, 301/Add.1, 305, 321, 326, 333, 338, 338/Corr.1, 339, 339/Corr.1, 340, 348, 350, 353, 357, 374, 384, 392, 399 and 431)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/60/221, 271, 306, 324, 349, 354, 356, 359, 367, 370, 395 and 422)

(e) Report of the United Nations High Commissioner for Human Rights (*continued*) (A/60/36 and 343)

1. **Ms. Jilani** (Special Representative of the Secretary-General on the situation of human rights defenders) said that her report (A/60/339) focused on the fundamental role of human rights defenders in the preservation and restoration of peace and security. To be effective, international peace and security strategies must give particular attention to protecting the situation of human rights defenders and to harnessing their work in all initiatives taken in that context.

2. The work of human rights defenders contributed to achieving the objectives of resolutions adopted by the Security Council and the Commission on Human Rights in many ways. Defenders provided an early warning of emerging problems and helped prevent them from deteriorating further. They played a crucial role in providing accurate information on the situation on the ground during the conflict, while protecting the lives of civilians and providing relief.

3. Defenders often conducted dangerous missions in barely accessible regions to interview victims and witnesses of human rights abuses and to conduct investigations. In some situations, their activities provided the only restraint on the behaviour of combatants and the only means for the international community to remain updated on developments in an armed conflict. Human rights defenders provided vital humanitarian assistance in the midst of conflicts. Without their help, millions of people would be much more vulnerable to violations of their basic rights to life, physical integrity, freedom, food and shelter.

4. Human rights defenders also played an important role during the transition from conflict to peace. Their reporting provided information on the evolving situation and helped to make Governments accountable. The defenders were instrumental in strengthening legislation, lobbying Governments for early ratification of human rights instruments and providing expertise on the compliance of new laws with human rights. They also helped to re-establish the rule of law and end impunity by providing legal assistance to victims, particularly with respect to their participation in truth and reconciliation processes.

5. During the course of their work, the defenders themselves sometimes became victims of killings, disappearances, torture, arbitrary arrest and detention, harassment and intimidation. They were denied access to places, people and information, and were prevented from speaking directly with witnesses and violations. When defenders were prevented from conducting their work, the peace and security objectives of the United Nations were less likely to be attained.

6. It was discouraging to observe that the protection of human rights defenders and their work was still not adequately emphasized within the United Nations system. The report included a series of recommendations to States, the United Nations Secretariat and the specialized agencies on how to further enhance the ability of human rights defenders to fulfil their important role. In the context of their mandates on peace and security and human rights, the Security Council and Commission must recognize the grave implications of repressive acts directed against human rights defenders.

7. **Mr. Meyer** (Brazil) wished to know how the role of civil society could be expanded to help the Special Representative in her work.

8. **Ms. Hart** (Canada) wondered what had contributed to the progress achieved thus far and wished to know the causes of the lack of coordination between United Nations personnel and human rights defenders.

9. **Ms. Hall** (United Kingdom), speaking on behalf of the European Union, asked what could be done to

improve the independent monitoring of new legislation imposed by some States in the name of counter-terrorism. With regard to the new restrictions in many countries on freedom of assembly and association, she wondered whether the elaboration of model laws on freedom of association and the right to register and receive funding could be helpful to ensure the greatest possible freedom of action for human rights defenders.

10. She also wished to know what measures States could adopt to enhance the capacity of human rights defenders as an early warning system and what steps the international community could take to help end impunity for attacks on defenders. Finally, she wondered what role the mechanism on human rights defenders should play within the context of the United Nations reform and what the minimum institutional requirements were for such a mechanism to operate effectively and in close cooperation with the overall human rights machinery.

11. **Ms. Jilani** (Special Representative of the Secretary-General on the situation of human rights defenders), in response to the questions raised, said that civil society organizations played an important role in the transfer and verification of information. The main problem was that such organizations were often denied access to information and places where violations had occurred. Lack of cooperation from Governments, especially with regard to establishing a dialogue with the organizations, was also a concern.

12. The question of the promotion and protection of human rights defenders had become more visible with the adoption of the Declaration on human rights defenders. She particularly appreciated the adoption of the European Union's guidelines on human rights defenders and hoped that they would help ease the defenders' situation. Although it was encouraging that some parliaments had passed declarations in support of human rights defenders, she was concerned that certain institutions, such as the judiciary, did not recognize the value and legitimacy of the work being done by human rights defenders and had not taken measures to protect them.

13. Turning to the question on the independent monitoring of new legislation within the context of counter-terrorism, she stressed that counter-terrorist measures were indeed obstructing the work of human rights defenders, particularly with regard to the right to a fair trial. The expertise of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism would be invaluable in the monitoring of new legislation. Counter-terrorist measures should be assessed not only in terms of their impact on security but also in terms of their compliance with the rule of law and human rights standards. Civil society organizations also had a fundamental role to play in that regard.

14. With respect to freedom of association and assembly, her previous report had made certain recommendations on model legislation that would guarantee that human rights defenders could carry out their functions and form networks and coalitions for their own protection. Lack of accountability seriously affected the work of human rights defenders and placed them at greater risk. To put an end to impunity, the international community needed to continue monitoring the situation and hold Governments accountable. The role of the human rights defenders mechanism was not only to look at individual cases but also to examine the social, economic and political conditions in which human rights violations were taking place. Unfortunately, lack of resources to carry out initiatives and provide effective protection and follow-up was an ongoing problem.

15. **Ms. Fontana** (Switzerland) pointed out that there was often a lack of interaction between human rights defenders and United Nations country teams. She wondered whether a clearer policy on the protection of human rights defenders might improve the situation.

16. **Ms. Ajamay** (Norway) asked how the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the field offices could contribute to strengthening the protection of human rights defenders.

17. **Ms. Jilani** (Special Representative of the Secretary-General on the situation of human rights defenders) said that the field offices played an important role in that they received direct information from the human rights defenders on the ground. When United Nations agencies received such information, they had a responsibility to respond. If it was not within their mandate to do so, the agency in question should pass the information on to the relevant United Nations bodies. It was important that OHCHR involve civil society organizations in its programmes so that

Governments would realize the legitimacy and value of their work.

18. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), introducing his report (A/60/316), said that the main part of the report concerned corporal punishment and the principle of non-refoulement. He had intervened in response to allegations in a number of countries involving corporal punishment, such as amputation, stoning, flogging and beating. States often sought to justify such continuing practices under domestic law, including religious law, claiming that they fell outside the prohibition against torture as they were lawfully sanctioned punishments.

19. The term "lawful sanctions" in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be interpreted as referring both to domestic and international law. Since international human rights law, in particular article 7 of the International Covenant on Civil and Political Rights prohibited corporal punishment, the so-called "lawful-sanctions" clause in article 1 of the Convention could no longer be invoked by any Government to justify corporal punishment. He therefore called upon States to abolish all forms of corporal punishment without delay.

20. He noted with concern the erosion of the absolute prohibition of torture in the context of counter-terrorism measures, particularly the rise in practices that undermined the principle of non-refoulement. Several Governments, in the fight against terrorism, had transferred or proposed to return alleged terrorist suspects to countries where they might be at risk of torture or ill-treatment, invoking diplomatic assurances that the suspects' right would be safeguarded. In his report, he had analysed the Committee against Torture case of *Agiza v. Sweden* and concluded that diplomatic assurances were unreliable and ineffective in protecting against torture and ill-treatment.

21. Diplomatic assurances were usually sought from States where the practice of torture was systematic. Such agreements were not legally binding, and the prisoners in question had no legal recourse if assurances were violated. Moreover, rather than requesting the Governments concerned to allow a genuine system for monitoring all places of detention and to stop the practice of torture, diplomatic assurances basically attempted to provide for a special bilateral protection and monitoring regime and undermined the multilateral protection system under the Covenant and Convention. He, therefore, called upon Governments to refrain from requesting diplomatic assurances related to the prohibition of torture, observe the principle of non-refoulement scrupulously, and refrain from expelling any person to a country where there were substantial grounds for believing that he or she would be in danger of being subjected to torture.

22. The methodology of his country visits included the possibility of conducting unannounced visits to any place of detention and speaking with detainees in private, as well as any other relevant persons and organizations, in addition to receiving assurances from the authorities that the persons with whom he met would not be subject to any form of reprisals. In February 2005 he had visited Georgia, which he considered to be a model example, and was grateful for the full cooperation and assistance extended by the Government. He had concluded that torture persisted in Georgia and was perpetuated by a culture of impunity. He had also visited the territories of Abkhazia and South Ossetia, where the detention conditions were of particular concern. Following his visit, he had been informed of a number of developments in line with his preliminary recommendations, including amendments to the Criminal Code to bring the definition of torture into line with the Convention against Torture, amendments to the Criminal Procedure Code and the ratification of the Optional Protocol to the Convention against Torture.

23. He had undertaken a visit to Mongolia in June. He expressed his appreciation to the Government for the invitation, but regretted that he had been denied any information relating to the practice of capital punishment, including access to prisoners on death row, in clear violation of his terms of reference. He had found that torture persisted in police stations and pre-trial detention facilities. Indeed, in one case in which he had intervened, an individual had died as a result of being severely beaten in police custody shortly before his arrival in the country. Impunity went unimpeded because of the absence of a definition of torture in line with the Convention, the lack of effective mechanisms to receive and investigate allegations and a basic lack of awareness of the standards relating to the prohibition against torture on the part of prosecutors, lawyers and the judiciary.

24. Among his most serious concerns was the situation of prisoners sentenced to the special isolation regime, where they served 30-year sentences in virtual total isolation. The complete secrecy surrounding the death penalty was also of concern. There were no official data available on the death penalty, and families of condemned persons were not notified of the date and place of execution and did not receive the bodies for burial. Moreover, the conditions of death-row prisoners, who were held in total isolation, continuously handcuffed and shackled and denied adequate food, could only be qualified as torture.

25. His visit to Nepal had taken place in September. He noted with satisfaction that the Nepalese Government had fully complied with the terms of reference for the visit. He had found torture to be systematic and practised by the police forces and the Royal Nepalese Army. In fact, he had received repeated and disturbingly frank admissions by senior police and military officials that torture had been acceptable in some instances and had indeed been practised systematically. He had also received shocking evidence of torture and mutilation carried out by the Maoists for purposes of extortion, punishment for non-cooperation and intimidation.

26. The link between involuntary disappearances and torture in Nepal was starkly illustrated by preventive detention laws with illusory safeguards that gave the police and the military sweeping powers to detain suspects, sometimes for months on end. Many detainees were tortured to force them to confess to involvement in Maoist activities. He noted with deep concern that impunity for acts of torture was institutionalized in a system where perpetrators were merely subject to demotions, suspensions and fines, or delayed promotions, and victims might be eligible for token awards of compensation.

27. His visit to the People's Republic of China would take place from 21 November to 2 December 2005. He was grateful to the Chinese Government for having accepted the terms of reference and for the commitment and cooperation which it had shown in the preparation of the mission, which, in addition to Beijing, would include visits to Tibet, Xinjiang, and Shandong provinces. In June 2005, the commencement of an investigation regarding the situation of the detainees in Guantanamo Bay had been announced. He was grateful to the United States Government for having recently answered a detailed questionnaire and was confident that an official invitation by the United States would soon be forthcoming.

28. In closing, he called upon all States which had not done so to ratify without delay the Optional Protocol to the Convention against Torture. He offered his assistance to Governments in establishing truly independent national preventive mechanisms, and hoped to make further country visits, inter alia, to Bolivia, Côte d'Ivoire, Mexico, Paraguay and the Russian Federation, in the near future.

29. **Mr. Saeed** (Yemen) said that he was surprised to see his Government's name mentioned in the Special Rapporteur's report in connection with the practice of torture. That practice was forbidden under the sharia-inspired Yemeni Constitution, adopted by national referendum. The practices referred to involved the enforcement of laws to prevent crimes. He called on the Special Rapporteur to provide more objective information and to show greater respect for the various cultures and religions of countries.

30. **Mr. La** Yifan (China) said that his Government was preparing for the forthcoming visit by the Special Rapporteur and trusted that his expertise would enhance national efforts to combat torture. The prohibition against torture was non-negotiable, and no country openly sought to justify the practice. There had been dissenting voices, however, among Governments and the media concerning the absolute prohibition against torture. Some had argued that unconventional methods of interrogation might be applied under special circumstances to save the lives of civilians. He would welcome further comment on such arguments.

31. **Mr. Bhurtel** (Nepal) said that torture and other cruel, inhuman or degrading treatment or punishment had been explicitly prohibited under the Constitution of Nepal. The Special Rapporteur must not mistake the statements to the contrary made by a few individuals for State policy. His Government was committed to the implementation of the Convention against Torture, had given due consideration to the recommendations of the special procedures, to which it attached great significance, was working to establish the necessary mechanism to clarify allegations of illegal detention and torture and would continue to cooperate with the Office of the High Commissioner for Human Rights in Nepal.

32. **Ms. Hall** (United Kingdom), speaking on behalf of the European Union, said that she would appreciate

further elaboration on the response from authorities concerning access to places of detention, the conditions for operations during country visits, follow up to those visits and action taken on individual cases. She would like to know how the prohibition against corporal punishment under the Convention would extend to such punishment against children as a means of chastisement in schools. Lastly, further information would be appreciated on the specific aspects of deficient justice systems which weakened the defence against the application of torture.

33. **Mr. Amorós Núñez** (Cuba), supporting the statement by China, said that his delegation had been struck by the failure of the report to mention the widespread allegations in the press and television and by international organizations of the systematic use of torture and other cruel, inhuman or degrading treatment against hundreds of individuals in the war against terrorism. The report had only recommended that diplomatic assurances should not be applied. He would welcome further comment on recommendations which might be put to Governments accused of using torture against prisoners in the war against terror.

34. **Mr. Meyer** (Brazil) said that his delegation would welcome further elaboration on the issue of the use of corporal punishment against children.

35. **Ms. García Matos** (Bolivarian Republic of Venezuela) said that paragraph 4 of the report of the Special Rapporteur, concerning States which had not responded to his request for information on implementation of his recommendations, had erroneously included her Government. In fact, her Government had provided a series of responses to OHCHR following the previous visit, to which she drew the attention of the current Special Rapporteur. Her delegation called for objectivity and impartiality on the part of the Special Rapporteur. Her Government did not tolerate torture and was committed to punishing any persons who engaged in it and other cruel, inhuman or degrading treatment and to providing medical and psychological services to the victims of such treatment. There were currently no pending cases of torture in Venezuela.

36. **Ms. Tchitanava** (Georgia) said that her delegation appreciated the important recommendations made by the Special Rapporteur on his visit to Georgia, where he had met with the President, the Minister for Foreign Affairs and other Government officials. He had also visited several places of detention, most notably in the secessionist regions of Georgia, Abkhazia and South Ossetia. Her Government had adopted a plan of action to implement the Convention. Unfortunately, torture and other forms of inhuman and degrading treatment had continued in the secessionist regions after the end of hostilities in 1994. In the Gali district alone, some 2,000 civilians had been murdered and 600 had disappeared. The violations had occurred in the zone of responsibility of Russian peacekeepers. Although the death penalty had been abolished by the Georgian Government, the punishment was still in place in Abkhazia. Her Government called on the international community for support in the promotion and protection of human rights, including with respect to the de facto authorities in Abkhazia and South Ossetia.

37. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that he had received full cooperation from the authorities during his recent visit to Nepal and that he fully recognized their difficult situation in having to fight Maoist insurgents. He was glad to hear that they had adopted his recommendations, including putting an end to impunity.

38. Governments had an obligation not only to carry out investigations into the allegations of torture that he brought to their attention but also to inform him of their subsequent findings. He regretted that only 41 per cent of Governments had responded to his requests for investigations to date and said that he would be grateful for any support that the General Assembly could provide to ensure that Governments responded to his requests and followed up on his recommendations.

39. As far as he was aware, the Government of the Bolivarian Republic of Venezuela had never provided any follow-up information on the implementation of his recommendations since the country visit there by his predecessor. However, if he was mistaken he would ensure that his subsequent report included a correction. Member States had an obligation to respect, protect and implement human rights. Governments should therefore respect and protect those rights by outlawing corporal punishment of children in State as well as private schools. He welcomed the information that he had received from the Republic of Georgia on the actions which it had taken to comply with his various recommendations. That would be duly reflected in his subsequent report.

40. **Mr. Waso** (Iraq) said that he agreed with the findings of the Human Rights Committee that the previous regime had imposed cruel, inhuman and degrading punishments and noted that his Government had revoked all laws and decrees providing for their imposition.

41. **Ms. Ajamay** (Norway) asked the Special Rapporteur to elaborate on the criteria for assessing whether there were substantial grounds for fearing that a person returned to a country would be at risk of torture or ill-treatment and, in particular, whether the term "substantial grounds" referred to a specific or a general risk of torture or ill-treatment.

42. **Ms. Lavin** (United States of America) said that the Special Rapporteur's request to visit the detainees held in Guantanamo Bay was being given serious consideration and would be discussed further with him bilaterally. She asked what key issues the Special Rapporteur hoped to raise during his forthcoming visit to China.

43. **Mr. Carrasco** (Bolivia) asked whether the Special Rapporteur's forthcoming visit to Bolivia was linked to a specific denunciation made in Bolivia.

44. *Mr. Anshor (Indonesia), Vice-Chairman, took the Chair.*

45. **Mr. Hussain** (Pakistan) said that there was a widespread concern that special mechanisms played a role in the politicization of human rights work. He wondered whether it might be possible to wait before making public the findings of country visits, thereby giving the authorities time to react to the recommendations.

46. **Mr. Gzllal** (Libyan Arab Jamahiriya) said that his country was a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that it did not practise corporal punishment, in accordance with sharia law. Paragraph 21 of the Special Rapporteur's report (A/60/316) referred to flogging, which was recognized as a penalty for criminal offences in sharia law. While his country had acceded to the International Covenant on Civil and Political Rights, it did not interpret the provisions of the Covenant as contradicting sharia law and the Special Rapporteur must take cultural diversity into account.

47. **Mr. Alday González** (Mexico) said that cooperation was vitally important for the prevention of torture. His country, therefore, looked forward to cooperating with the Special Rapporteur on the development of an independent national mechanism for the supervision of detention centres.

48. **Ms. Enkhtsetseg** (Mongolia) said that, during the Special Rapporteur's visit to Mongolia in June 2005, he had been received by all the relevant officials and that he had had access to all the prisons and detention centres. Her Government was committed to cooperating with the Special Rapporteur and took his recommendations seriously. A number of actions had already been taken to bring national laws and procedures into line with international standards and conventions. Steps were being taken to improve prison conditions in the country, including the installation of electronic monitors, the employment of social workers in prisons and the establishment of training centres for prison officers. As a follow-up measure to the visit by the Special Rapporteur, a task force had been set up to carry out an extensive survey of human rights violations of prisoners. The task force would also propose the activities to be implemented on the basis of the Special Rapporteur's recommendations. Her Government had also provided detailed information to the Special Rapporteur on individual cases.

49. **Mr. La** Yifan (China) said that the Special Rapporteur's forthcoming visit to China was certain to include discussions on how to safeguard human rights while countering terrorism. His delegation also expressed its willingness to have an in-depth bilateral discussion with the United States following the Special Rapporteur's visit.

50. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that the main reasons why torture continued were excessive use of pre-trial detention without real judicial monitoring, the absence of effective methods to investigate allegations of torture, and the culture of impunity. According to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, there was a subjective and an objective test for assessing whether there were substantial grounds that a person to be returned to another country would face torture. The objective test determined whether there was a widespread or systematic practice of human rights violations in that country and the subjective test whether the individual concerned was personally at risk of torture. If both tests were answered in the

affirmative, there was an absolute prohibition to return the person to that country, whether or not diplomatic assurances had been received that torture would not be carried out.

51. He was grateful to the Government of the United States of America for its cooperation in answering his questionnaire and hoped that he would be granted access to its detention facilities in Guantánamo Bay. Many issues would be discussed during his visit to China, including those in the context of counter-terrorism and judicial reform measures. He and his predecessor had received a long-standing invitation to visit Bolivia, but their missions to that country had been postponed in recent years because there had been few allegations relating to human rights violations in Bolivia. Perhaps they could discuss on a bilateral basis whether a visit to Bolivia was necessary. He stressed that country visits were generally a useful tool for discussing how to prevent torture.

52. He assured the representative of Pakistan that he would endeavour to do nothing that would lead to the politicization of human rights. The procedure followed for country visits was very clear and adhered to strictly. First, he only visited a country when an official invitation had been issued by its Government, and at the end of his visit he always informed that Government and the press about his preliminary conclusions. Second, the report that he subsequently drafted was always sent to the Government concerned, which had four to six weeks to provide their comments. Finally, all those comments were duly reflected in the final report submitted to the Commission on Human Rights.

53. While cultural diversity was always taken into account, there were universal minimum standards that should not be undermined by it and with which Governments would have to comply. He welcomed the establishment of the task force in Mongolia. He had received information from the Mongolian authorities on the individual cases that he had raised and all information received from them would be duly reflected in his subsequent report.

54. **Mr. Scheinin** (Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism) said that he was conscious of the destructive effect of terrorism on the enjoyment of human rights. It posed a challenge to Governments that wished to fight effectively against terrorism while complying with human rights law. His mandate, established on the basis of a report by an independent expert, required him to support Governments and other actors in protecting and promoting human rights while efficiently countering terrorism. He had to ensure that any measures taken to that end were in compliance with human rights law, humanitarian law and refugee law. In particular, he had to remind Governments that the fight against terrorism should never cause them to depart from their obligation to respect human rights and fundamental freedoms, as they would thus themselves be playing into the hands of the terrorists.

55. His mandate was a complementary one, taking into account the considerable work already done in the area by other Special Rapporteurs or under special procedures. While targeting his own action at areas where gaps existed, he would consult and cooperate with other relevant bodies and experts, as he had already begun to do. His mandate was not, however, a mere substitute for other, inadequate procedures, but was comprehensive, embracing the combined effect of various counter-terrorism measures in respect of the full range of human rights. That meant also exploring sustainable strategies to prevent acts of terrorism, in particular by addressing their root causes, and calling for the effective protection of the human rights of victims of terrorism and their families. He had a proactive role, entailing diagnosis of problems and assistance in designing tools to fight terrorism. He would work in interaction with Governments and would, with their consent, visit their respective countries. Countries would be chosen not only in response to reports of violations but also with a view to identifying best practices, which he would compile and publish.

56. **Ms. Hall** (United Kingdom), speaking on behalf of the European Union, asked Mr. Scheinin to explain in greater detail how he would produce a compilation of best practices and indicate ways in which Governments might assist. She wished to know to what extent he would use the findings of the independent expert in his work. Referring to the Counter-Terrorism Committee, she wondered what contacts had already been established and enquired about the format for cooperation between them. She also asked him to speak about his role in regard to the implementation task force set up within the framework of the Secretary-General's global strategy for fighting terrorism. Lastly, on complementarity, could he give examples of

concrete joint activities planned with other special procedures?

57. **Mr. Hyassat** (Jordan) enquired about the legal protection afforded to suspected terrorists and whether it differed from that guaranteed in situations of armed conflict. He also asked the Special Rapporteur what he would be doing to address the question of discrimination on grounds of race or religion in the context of the fight against terrorism.

58. **Mr. Hussain** (Pakistan) welcomed the Special Rapporteur's concern about the root causes of terrorism and invited him to draw on Pakistan's experience in that area. He stressed the constraints weighing upon States in the front line of the fight against terrorism, which had to react in real time to terrorist attacks while complying with their legal obligations and at the same time to avoid harming innocent people.

59. **Ms. Fontana** (Switzerland) asked the Special Rapporteur how he would assess the human rights impact of counter-terrorism measures in the context of humanitarian law, with particular reference to the question of suicide attacks.

60. **Mr. Scheinin** (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism) said that best practices included the elaboration of model laws. Other elements related to: the definition of terrorism, which varied widely in national law; modification of national legislation for reasons of security or other legitimate concerns which, while barring access to a lawyer, could not suppress the right to have legal assistance; and the current trend of several States to criminalize not only direct incitement to terrorism but also indirect expressions of support, with the attendant risk of curtailing the legitimate right to freedom of expression. He referred in that connection to article 5 of the Council of Europe Convention on the Prevention of Terrorism, which perhaps went too far in restricting freedom of expression. He would indeed draw on the work of the independent expert, particularly with regard to the links between human rights law, humanitarian law and refugee law.

61. He was already in an open and constructive dialogue with the Counter-Terrorism Committee, bearing in particular on specific forms of cooperation between them. The role of that Committee was itself changing, with its human rights mandate having only recently been fully recognized. As it received reports more frequently than the human rights treaty bodies, he expected to benefit greatly from its cooperation. The Secretary-General's Global Strategy against Terrorism was not limited to reactive measures but was also concerned with prevention. He was in contact with the Strategy's implementation task force, particularly in the light of the fifth element of the Strategy, which concerned the defence of human rights. He was also in consultation with some of the other Special Rapporteurs, particularly where their mandates overlapped, and had just recently benefited from their collaboration in drafting letters to a number of States on issues within his remit.

62. The question of safeguards for suspected terrorists had been addressed by the Human Rights Committee in its General Comment 29 on derogations during a state of emergency. While article 4 of the International Covenant on Civil and Political Rights allowed derogations, article 9 thereof specified a number of non-derogable rights, making safeguards necessary, in particular to ensure access to legal assistance. As for the risk of discrimination, the trend towards tighter immigration controls in some States was leading some Governments to have recourse to the practice of "profiling" by religion or race, which did indeed entail such a risk and could result in human rights violations. His concern was essentially with the human rights not of terrorists but of innocent bystanders, including asylum-seekers, who were the primary victims of insensitive counter-terrorism measures. He would therefore be paying particular attention to the issue.

63. He agreed that the issue of the human-rights-conformity of counter-terrorism measures was delicate, noting that it continued to be addressed by the Security Council. It was wrong to approach it in terms of a hierarchy of norms; rather, an effort must be made to ensure harmony between them and, since the Charter of the United Nations was based on human rights, an essential requirement was that all such measures conform to the Charter. Lastly, referring to the interrelationship between humanitarian law, human rights law and refugee law, he said that suicide attacks were a special concern. He would benefit from the independent expert's work in that respect and would also have recourse to the idea of "fundamental standards of humanity", understood as the overlap between the various areas of law.

The meeting rose at 12.50 p.m.

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Summary record of the 25th meeting
Held at Headquarters, New York, on Wednesday, 26 October 2005, at 3 p.m.

Chairman: Mr. Butagira ..... (Uganda)
later: Ms. Carvalho (Vice-Chairman) ..... (Portugal)

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(c) Human rights situations and reports of special rapporteurs and representatives (*continued*)*

(e) Report of the United Nations High Commissioner for Human Rights (*continued*)*

* Items which the Committee has decided to consider together.

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05-57070 (E)

The meeting was called to order at 3.10 p.m.

Agenda item 71: Human rights questions *(continued)* (A/60/40, 44, 129, 336, 392 and 408)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms *(continued)* (A/60/134, 266, 272, 286, 299, 301 and Add.1, 305, 321, 326, 333, 338 and Corr.1, 339 and Corr.1, 340, 348, 350, 353, 357, 374, 384, 392, 399 and 431; A/C.3/60/3 and 5)

(c) Human rights situations and reports of special rapporteurs and representatives *(continued)* (A/60/221, 271, 306, 324, 349, 354, 356, 359, 367, 370, 395 and 422)

(e) Report of the United Nations High Commissioner for Human Rights *(continued)* (A/60/36 and 343)

1. **Ms. Jahangir** (Special Rapporteur on freedom of religion or belief) reviewed the activities she had undertaken since her appointment in July 2004. In the course of visits to Nigeria, Sri Lanka and France, she had noted that the basic principles relating to the right to freedom of religion or belief had been generally respected by the Governments concerned. However, two key areas of controversy were the limits placed on the right to propagate one's religion for the purposes of conversion and the freedom to wear religious symbols in State schools. Religion or freedom of religion had sometimes been used as grounds for violating other human rights or generating a climate of religious intolerance. Interreligious dialogue needed to be encouraged at all levels to help create harmony between religious communities so that they could live side by side in mutual respect, and such initiatives should not be limited to religious leaders alone.

2. In her interim report (A/60/399), the Special Rapporteur had developed two issues of concern to her mandate: first, the right to adopt a religion of one's choice, to change or to maintain a religion or not to have a religion at all, and second, the freedom of religion or belief of persons deprived of their liberty. On the first issue, she had received numerous reports, including cases of alleged forcible conversions. Violations and limitations were unacceptable and, when they were committed by non-State actors, States had an obligation to ensure the enjoyment of the right to freedom of religion or belief. On the second issue, she had received several allegations of situations where the right of freedom of religion or belief of detained persons had been violated, or where the religion of detained persons had been used for purposes of ill-treatment. All Governments should give more emphasis to freedom of religion in the training of personnel at detention facilities.

3. Her programme of country visits for the coming year had not yet been organized, and she drew the attention of all Governments to the critical importance of country visits and the cooperation expected from Governments. Her report had included a list of the countries that had been visited thus far and a list of the countries to which a request for an invitation had been transmitted. She was concerned that the number of countries that did not want to extend an invitation to visit was increasing, and that such refusals often came from countries for which she had received substantial allegations of violations of the right to freedom of religion or belief. She therefore supported the creation of a mechanism to deal with the human rights situation in those States where serious concerns existed but which were not cooperating with in situ visits.

4. Intolerance, if met in similar terms, would only breed further intolerance and extremism. It was therefore essential that Governments should continue to uphold fully the norms of human rights relating to freedom of religion or belief in their efforts to curb violence, even when the latter was perpetrated in the name of religion.

5. **Ms. Hall** (United Kingdom), speaking on behalf of the European Union, noted that the Special Rapporteur had stated that the events of 11 September 2001 had unfairly and illegally made targets of Muslims, and that religious leaders needed to denounce violence in stronger terms if Islam was to be de-linked from terrorism. She wondered how the Special Rapporteur would encourage more religious leaders to speak out against violence. In regard to continuing violations of the human rights of certain religious communities such as the Baha'i, she asked what the Special Rapporteur intended to do to raise international awareness of the issue. On the issue of the mainstreaming of gender in the Special Rapporteur's work, she asked what the experiences of those efforts had been to date.

6. **Mr. Omotosho** (Nigeria), noting that his country had been one of those visited by the Special Rapporteur, said that coverage of Nigeria in her report had been fair, accurate and balanced. Still, it was important for a country's religious complexity to be taken into account and Special Rapporteurs should not see themselves as prosecutors. In that context, he wondered how countries might be encouraged to extend invitations more readily.

7. **Mr. Hussain** (Pakistan) sought comments on the situation of those who followed the divine commandments of a divine faith. To what extent could followers of a religion be expected to adhere to standards created by fallible human beings?

8. **Ms. Hart** (Canada), said it was critical that the Special Rapporteur should be invited to make in situ visits and asked for further information about the possible new mechanism to deal with the human rights situation in those States where serious concerns existed but which did not cooperate with in situ visits.

9. **Ms. Levin** (United States of America) asked whether a tiered system of religion discriminated against or belittled those on lower tiers.

10. **Mr. El Badri** (Egypt) noted that the report of the Special Rapporteur had touched on the rise of Islamophobia in many parts of the world. He wondered how that issue should be approached, particularly with respect to Muslims living in non-Muslim countries, and what responsibility States bore in dealing with the defamation of certain religions.

11. **Ms. Jahangir** (Special Rapporteur on freedom of religion or belief), referring to the questions from the representative of the United Kingdom, said that, as she had indicated in her report, religious leaders needed to denounce violence in stronger terms. Some sort of political action by religious leaders might be needed, but that lay outside her area of competence. So far as the violations of human rights of certain religious minorities were concerned, it was evident that tacit support for some forms of violence existed and that certain religious minorities such as the Baha'i were being persecuted. It was essential for Governments to denounce violence in all circumstances, regardless of the religious affiliations of those involved, and political leaders had to unite in denouncing violence with a single voice. As for gender mainstreaming, the whole question of the interplay between the rights of women and the right to freedom of religion or belief had been examined. She had looked at the question of religious symbols, particularly the case of headscarves in France, and had looked at the question of interfaith marriage during her visit to Nigeria. Those questions were tied to the right of women to make their own decisions autonomously, and she planned to explore the issue in greater depth.

12. In reference to the question from the representative of Nigeria on encouraging countries to extend invitations to her to make in situ visits, she pointed out that the purpose of such visits was to follow up on reported violations, which were often denied by Governments. In situ visits were the only way to look into them. As to how Governments might be encouraged to cooperate by extending invitations, perhaps some degree of peer pressure might be applied, or more space might be devoted to the issue in her reports.

13. In reference to the question from the representative of Pakistan, she said that, in pursuing her mandate, she had to focus on human-rights instruments and deal with human-rights standards. While laws might be in conflict with beliefs, human rights were universal and a consensus was needed in applying them to all religions and religious groups.

14. In reference to the question from the representative of Canada, she would welcome ideas from delegates on the workings of a new mechanism to deal more systematically with countries that did not cooperate with special procedures in terms of in situ visits.

15. In reference to the question from the representative of the United States of America she said that the basic principle was that the registration of religious communities should be simple and straightforward, and not involve extensive formal requirements. The only purpose of registration should be to establish an incorporated legal entity for the purpose of enjoying financial or tax benefits. It should not be construed as a licence to practise a religion, and no one religious group should be able to exert influence over the registration of other religious groups.

16. In reference to the question from the representative of Egypt, she said that every religious minority had its own special problems in each country. A tendency to discount the beliefs of others, especially of Muslims, had recently gained strength, and in some

countries, as alarmists had begun to speak out more stridently, Muslims had been stigmatized. It was important to look to what Governments could do, and to what Muslims could do. A balance had to be found between freedom of expression and freedom of religion or belief, and problems should be examined case by case.

17. **Mr. Despouy** (Special Rapporteur on the independence of judges and lawyers) introduced his report on the independence of judges and lawyers (A/60/321), which identified the issues that had been of greatest concern to him since the sixty-first session of the Commission on Human Rights and described his main activities in 2005. The report also addressed the right to a fair trial in the context of the fight against terrorism, the activities of the International Criminal Court and the establishment of the Iraqi Special Tribunal, and raised other issues that he intended to address in his next report, such as, the right to the truth, access to justice and the challenges that transitional situations posed for the judiciary, particularly in societies emerging from conflict.

18. The first substantive issue addressed in the report (paras. 11-29) concerned his two missions to Ecuador, in April and July 2005, following the unconstitutional dismissal of the Constitutional Court, Supreme Electoral Court and Supreme Court and the subsequent ousting of the President of the Republic, Lucio Gutiérrez. He planned to submit a final report to the Commission on Human Rights at its next session, as the process of selecting judges that had begun in July 2005 was still ongoing and, even with international support, had come up against many difficulties internally. Almost a year later, the Constitutional Court and the Supreme Court had still not been appointed and Ecuador's international image was being damaged as a result. The reappointment of both Courts was essential to ensuring respect for the rule of law, rebuilding the country's institutions and ensuring democratic stability. He therefore called on the leaders of Ecuador's main sectors swiftly to fill the institutional vacuum and urged the international community to continue offering its support. The absence of an independent Constitutional Court and Supreme Court was extremely worrying. He hoped that Ecuador would have a Supreme Court by the time he submitted his final report to the Commission on Human Rights.

19. Turning to counter-terrorism and the right to a fair trial (paras. 30-34), he mentioned in particular his concern at the dangerous tendency to roll back existing levels of international protection and at the adoption by many States of national measures that contravened international human rights standards, such as the resumption of proceedings before military commissions, which did not comply with standards concerning the right to a fair trial. He, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right to health, and the Special Rapporteur on the question of torture had repeatedly requested permission from the United States Government to visit Guantánamo Bay but as yet none of their requests had been granted. The United States had, however, responded to a questionnaire sent by the Special Rapporteurs and the two sides were now engaged in [illegible] dialogue concerning when they might be able to have access to Guantanamo Bay, Iraq, Afghanistan and other detention centres where persons accused of terrorism were being held.

20. On the subject of the International Criminal Court (paras. 35-41), he mentioned in particular the welcome recent accessions to the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court; his concern about the continued opposition of some Governments to the Court, particularly when it took the form of bilateral immunity agreements with States parties; and the Security Council's decision to refer to the Court the grave human rights violations occurring in the Darfur region of the Sudan, a valuable precedent that he hoped would be applied to other such situations.

21. As for the Iraqi Special Tribunal (paras. 42-43), he expressed his concern at the manner in which trials were being conducted and identified a number of shortcomings, some of which could be traced back to the manner and circumstances of the Tribunal's establishment. He was particularly concerned that the Tribunal's jurisdiction was restricted to specific people and a specific time frame; in other words, it could only try Iraqis for acts committed before 1 May 2003. In his view, the Tribunal's power to impose capital punishment demonstrated the extent to which it contravened international human rights standards. Recent events that had led to the suspension of proceedings and the widespread lack of security confirmed his concerns that physical conditions made a proper trial impossible. In his report (para. 43), he therefore urged the Iraqi authorities to ask the United

Nations to set up an independent tribunal which complied with international human rights standards. The recent assassination of one of Saddam Hussein's defence lawyers demonstrated the extent to which his concerns were well-founded.

22. In September 2005, after submitting his report, he had visited Tajikistan, where he had taken note of the reforms carried out since the country's independence and, in particular, the end of its civil war, namely the introduction of a moratorium on the death penalty, the adoption of a new civil code and penal code, and the ratification of the main international human rights treaties. However, the country still needed to make substantive reforms in key areas if the members of its judiciary were to be independent. He had also noted that, owing to the legacy of the Soviet system, in legal proceedings the public prosecutor was superior to defence lawyers. Such a situation undermined the role of judges, who at times were unable to act independently for fear of the possible repercussions of their acts. He would be submitting a detailed report on his mission to the Commission on Human Rights.

23. During his mission to Kyrgyzstan, meanwhile, he had welcomed the efforts undertaken in the context of Constitutional reform, while stressing the need to continue overhauling the country's institutions, particularly the judiciary, in order to ensure stable and ongoing development in the country. He had also expressed his concern at the population's lack of trust in the judicial system owing to the inability of procedures to protect their rights, particularly regarding habeas corpus and due process. He noted a number of characteristics common to both Tajikistan and Kyrgyzstan: both country visits had taken place at the invitation of the respective Government; in both countries there was a political will to carry out reforms; and in both countries some but not all authorities were open to international cooperation, which was essential.

24. During his visit to Kyrgyzstan, he had also had the opportunity to speak with four Uzbek citizens who had been detained in the south of the country after fleeing the tragic events that had occurred in Andijan in May 2005. He welcomed the Kyrgyz Government's decision to transfer most of the Uzbek refugees to third countries, but was very concerned about the four Uzbek citizens still being detained and called on the authorities to facilitate their transfer to third countries. Such action was particularly important given that some Uzbek citizens had been forcibly returned, without judicial intervention, in June 2005. He had recently received a note from the Uzbek authorities but had not yet been able to analyse it properly. In any case, it was his understanding that the principle of the non-refoulement of asylum-seekers was an unquestionable principle of international law.

25. Noting that his was a very broad and complex mandate, he said that, in almost all regions, the situation of judges and lawyers was a matter of concern. Follow-up by the Committee was therefore essential to ensuring respect for human rights and helping countries rebuild their institutions.

26. **Mr. Moncayo** (Ecuador) thanked the Special Rapporteur for his invaluable work in Ecuador, which demonstrated what the United Nations was capable of achieving when facing serious crises and should therefore be taken into account in the current discussion about United Nations reform. The Special Rapporteur had not only denounced the irregularities of the Government, but had also proclaimed that the rule of law had been broken and established a procedure for restoring it. His Government, National Congress and, most importantly, civil society were all involved in the intense debate currently under way concerning the form and content of essential reforms, some of which had been identified some time ago but never implemented. His Government was also promoting a National Agreement which would enable the political system to address problems and make the necessary changes, in order to ensure constitutional stability, the rule of law and full democracy. The process that the Special Rapporteur had started was now entering its final phase and could, he hoped, be concluded by November 2005. In that regard, he hoped that Ecuador would be able to continue to count on the support of the Special Rapporteur, whom he invited to visit the country again, and of the international community in general.

27. **Ms. Hall** (United Kingdom), speaking on behalf of the European Union, said that her delegation would be interested to know: whether the Special Rapporteur had had the opportunity to follow up directly with the Ecuadorian authorities since his visit on the issues relating to the Supreme Court; how he planned to take into account the draft principles governing the administration of justice through military tribunals contained in the report submitted by Mr. Emmanuel Decaux on the administration of justice through

military tribunals (E/CN.4/Sub.2/2005/9) in fulfilling his mandate; and what measures he would recommend to overcome the general population's lack of trust in the judicial system witnessed in Kyrgyzstan and Tajikistan and in important periods of transitional justice in general.

28. **Ms. Levin** (United States of America), responding to the Special Rapporteur's criticism of the establishment of military tribunals at Guantánamo Bay, said that the military commission process provided for a full and fair trial, while protecting national security information, and included fundamental principles of justice, such as the presumption of innocence, proof of guilt beyond a reasonable doubt, appointment of military counsel at no cost, the right to hire civilian defence counsel and the ability to present evidence and call witnesses. Her Government would continue to evaluate how it conducted commissions and, when appropriate, make changes to improve the process. In that regard, in August 2005, it had approved several changes to the rules governing military commissions. Such changes followed a careful review of commission procedures and took account of a number of factors, including issues that had arisen in connection with military commission proceedings that had begun in late 2004, a review of relevant domestic and international legal standards and suggestions from outside organizations on possible improvements to the process. Lastly, her Government was giving serious consideration to the Special Rapporteur's request to visit the detention centre at Guantánamo and looked forward to discussing the issue with him bilaterally in the coming days.

29. *Ms. Carvalho (Portugal), Vice-Chairman, took the Chair.*

30. **Mr. Perez** (Switzerland) said that his delegation would be interested to know how the Special Rapporteur intended to work with the High Commissioner for Human Rights during the preparation of its study on the right to the truth.

31. **Mr. Despouy** (Special Rapporteur on the independence of judges and lawyers), responding to the representative of Ecuador, said that another visit would be very useful when drafting his final report to the Commission on Human Rights. While he appreciated that a considerable effort was being made, the international community must continue to accompany the process, which he hoped would soon be completed.

32. In response to the representative of the United Kingdom, he said that he had followed up directly with the Ecuadorian authorities twice: during his first visit in April 2005, he had spoken in person with various authorities, including the then President, Lucio Gutiérrez; and a month before submitting his report to the Commission on Human Rights, he had spoken to President Gutiérrez by telephone, to express his concern that the situation was worsening rather than improving. He had also informed the Commission on Human Rights that he no longer had any faith in Ecuador's institutional stability because the root causes of the conflict were not being addressed. Since the ousting of the former President, he had been in close contact with the new authorities, who had pushed forward many of his recommendations. Ecuador could serve as an example in the future, both in terms of the important role played by the international community and because it demonstrated how a judicial crisis could become an institutional crisis and ultimately lead to the ousting of a constitutional President.

33. The draft principles governing the administration of justice through military tribunals, meanwhile, were an important step forward in the protection of human rights. Historically, the most serious human rights violations had occurred as a result of military tribunals and special laws. The establishment of principles and guarantees was a significant step forward, as they would reinforce international human rights principles and jurisprudence. He very much hoped that the principles would be adopted by the Commission on Human Rights and later by the General Assembly.

34. As for the situation in Tajikistan and Kyrgyzstan, he said that he would address the issue specifically in his next report. Suffice to say for now that, owing to their heritage as former Soviet republics, there was still a tendency in Kyrgyzstan, Tajikistan and Kazakhstan — which he had visited on a previous occasion — for the public prosecutor to intervene in the civil and, in particular, criminal process. Such a situation disrupted the equilibrium needed to guarantee the independence of the judiciary, as the defence was not properly represented and judges did not enjoy the role of referee that they generally enjoyed in developed systems. Both Kyrgyzstan and Tajikistan were aware of the need to address such issues in the context of future reforms and were moving away from a model in which the judiciary was not fully independent towards a structure that complied with international standards.

35. Noting that as Special Rapporteur he had been asked to conduct a study on transitional situations, he said that for decades his own region of Latin America had suffered coups and military dictatorships, even though many States in the region had Constitutions clearly setting out the distribution of power and the independence of the judiciary. With the restoration of democracy, existing institutions had had to be brought back into line with the constitutional system. Kyrgyzstan and Tajikistan were undergoing a similar transition towards the rule of law and an independent judiciary. However, in some countries emerging from critical situations — such as Afghanistan — the State — if there had ever been one — had been all but destroyed. In all transitional situations, rebuilding the judiciary was an essential part of rebuilding institutions. As Special Rapporteur, he would be drawing on the work of the Office of the High Commissioner for Human Rights (OHCHR) when addressing those issues. He also noted that in a study conducted in 2004, the Secretary-General had stressed the importance of addressing issues relating to justice in countries where peacekeepers had been withdrawn. The United Nations system faced the specific challenge of how it could best help resolve transitional situations and, in particular, what cooperation mechanism it could provide for the reconstruction of the judiciary.

36. Turning to the comments made by the representative of the United States, he said that he had taken note of the reforms carried out as a result of studies on Guantánamo detainees and of the jurisprudence that was building up within the United States, which demonstrated that independent domestic mechanisms were in place to examine such situations. He hoped that the dialogue established some time previously would ultimately result in the Special Rapporteurs concerned being able to visit Guantánamo and report back to the Commission on Human Rights.

37. Responding to the representative of Switzerland, he said that the right to the truth was closely linked to transitional situations whereby countries emerging from brutal dictatorships were faced with the need to push the transition forward and to a certain extent bury the past. Historically, it had been thought that to achieve national reconciliation it was important to forget the past. Today, however, it was generally acknowledged that it was possible to face and even investigate the past without compromising the development of a country's institutions. He would, of course, draw on experiences from his own region, in particular his own country, Argentina, which had known no limits when investigating its own past. He would be addressing both the right to the truth and the challenges for the judiciary in transitional situations in conjunction with OHCHR. In that regard, he had recently participated in a seminar organized by OHCHR.

38. Noting that he would be submitting four reports to the Commission on Human Rights at its next session, he said that the experience of Ecuador shed light on the role of the Special Rapporteur on the independence of judges and lawyers, particularly with regard to the creation of a standing Human Rights Council, for there was a dimension that went beyond establishing the facts, to include helping countries rebuild.

39. **Ms. Wasu** (Iraq), in response to the Special Rapporteur's concern about the procedures of the Special Tribunal to deal with crimes against humanity, said that the Tribunal had been established by the Governing Council and reflected the will of the Iraqi people to have appropriate legal instruments. After consultations with international experts and non-governmental organizations, as well as with Iraqi lawyers and judges, the legislators had attempted to bring the procedures in line with international standards and to concentrate on crimes condemned by international law, such as genocide, war crimes and crimes against humanity. They also sought to ensure that the Tribunal only had jurisdiction over Iraqi people, either living in Iraq or abroad from 1968 to 2003, so that it would cover crimes committed in the war against the Islamic Republic of Iran and the State of Kuwait. At the national level, the work of the Tribunal was based on laws pertaining to administration during the transitional period and national security. At the international level, it was based on the four Geneva Conventions and the Universal Declaration on Human Rights.

40. **Mr. Despouy** (Special Rapporteur on the independence of judges and lawyers) said that reservations had been raised concerning the fact that the Special Tribunal only dealt with cases prior to the occupation. It was not the moment to analyse the nature of the implementation. During the past decade, considerable progress had been achieved with international tribunals, especially in the case of Rwanda, Sierra Leone and Cambodia, and his

comments had been intended to reflect what the international community could do with regard to crimes against humanity. It was to be hoped that any judgements given would be seen as an act of justice, not just a mere procedure.

41. **Ms. Ertürk** (Special Rapporteur on violence against women, its causes and consequences) said that she was convinced more than ever before that the United Nations, as the only multilateral forum where the international community could address common problems, continued to have the potential to improve women's lives worldwide. To realize such potential, the international community should join forces in supporting and improving United Nations mechanisms.

42. Her annual report to the sixty-first session of the Commission on Human Rights (E/CN.4/2005/72) had focused on intersections of violence against women and HIV/AIDS. The vulnerability of the increasing number of women with the disease was largely rooted in pervasive gender inequality and discrimination, which often manifested itself in multiple forms of violence. As victims of violence, women were susceptible to HIV/AIDS infection, which, in turn, increased the risk of further violence against them. Not only were women subjected to rape and sexual assault, but they were at risk in monogamous and long-term relationships on account of male infidelity and refusal to use condoms. Women living with HIV/AIDS were also stigmatized more severely and were often rejected by family members and ostracized by their community, which prevented them from having access to adequate treatment.

43. Programmes for the prevention and treatment of the pandemic could not succeed without challenging the unequal power structures governing relationships between women and men. In her report to the sixty-first session of the Commission on Human Rights, she had elaborated recommendations under five broad categories: ending violence against women; addressing the gender dimensions of HIV/AIDS, discrimination and stigma; ensuring women's equal access to health care; empowering women for their full enjoyment of all human rights; and promoting global action against HIV/AIDS.

44. Since December 2004, she had undertaken four country missions to the Russian Federation, the Islamic Republic of Iran, Mexico and Afghanistan. In Afghanistan, she had been particularly disturbed by the continued existence of multiple normative systems that undermined the establishment of the rule of law in that country, which was an essential element of the protection of women's rights. Both the Government of Afghanistan and the international community involved in the reconstruction process should prioritize women's rights if sustainable security and stability were to be achieved. In 2006, she would be visiting the Governments of Algeria and the Netherlands.

45. She had recently participated in a regional consultation for the Asia-Pacific region and would, in the near future, be attending regional consultations for the Africa and Central Asia regions. Regional consultations had become an integral component of her work and she encouraged civil society actors to initiate similar meetings in other regions. She had also participated in numerous meetings organized by States and civil society concerning her mandate.

46. Her next report to the Commission on Human Rights would focus on the due diligence standard, as defined under article 4 (c) of the Declaration on the Elimination of Violence against Women. Failure of States to exercise due diligence to prevent, investigate and punish acts of violence against women constituted a violation of women's human rights. The concept had become intimately associated with women's human rights advocacy and yet, despite frequent use of the term, there was a lack of agreement and clarity as to what the standard required. In her report, she intended to lay out the most common usage of the due diligence standard, which emphasized response to violence against women in the context of the criminal justice system, access to services and legislative reform. It would examine how the due diligence standard could best be applied at the individual, community, State and transnational levels.

47. In an era of globalization, actors outside the realm of the State had entered the stage of politics and undermined the State's capacity to comply with its due diligence obligation, while creating a vacuum in legislation for the protection of women. In her report she would examine the utility of the due diligence standard in expanding the boundaries of State responsibility to respond more effectively to violence against women perpetrated by non-State actors and examine how those actors could be held accountable. She was convinced that effective implementation of the due diligence standard required measurable indicators, time-bound targets and disaggregated data to measure

compliance. Identifying indicators on violence against women and State compliance with human rights standards would be a crucial step towards assisting Governments to develop effective strategies and she would be undertaking a project in that area.

48. In conclusion, she emphasized the importance of her being able to work more closely with the Committee on the Elimination of Discrimination against Women and the Commission on the Status of Women.

49. **Ms. Hall** (United Kingdom), speaking on behalf of the European Union, referred to the Special Rapporteur's report on intersections of violence against women and HIV/AIDS (E/CN.4/2005/72), in which she had mentioned a global coalition against HIV/AIDS. It would be interesting to learn what steps had been taken, whether the Special Rapporteur had worked with the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the World Health Organization (WHO) and how she planned to proceed in 2006. She also wanted to know what progress she had made in consultations with the United Nations High Commissioner for Refugees (UNHCR) concerning cases in which women were at risk of being deported to countries where they might be subjected to violence. Finally, she asked the Special Rapporteur what lessons she had learned during her country visits in which she had focused on cultural practices in families and communities that resulted in violence to women.

50. **Ms. Gallardo Hernandez** (El Salvador) was concerned about a number of allegations made by the Special Rapporteur in her report on violence against women after her mission to El Salvador (E/CN.4/2005/72/Add.2). The report referred to situations in which girls were perceived as a legitimate sexual replacement for the mother if the mother was sterile, an allegation which was entirely condemned by the Government of El Salvador. However, she wished to question the legal and political implications of the example given of a 10-year-old girl who had been raped and impregnated by her father and forced to keep the child. The international community did not have a common position on abortion and the Constitution of El Salvador respected the "right of life" of the human embryo from the moment of conception. Any violations of that right constituted a crime under the Penal Code. The Government of El Salvador wished to make reservations with regard to a "pseudo-right" upon which Member States might not have agreed.

51. **Ms. Hart** (Canada) reiterated her support for the Special Rapporteur's concept of due diligence and hoped it would be integrated in the Secretary-General's in-depth study on all forms of violence against women. She further stressed the importance of developing indicators on violence against women and looked forward to hearing the Special Rapporteur's further views on the subject.

52. **Ms. García-Matos** (Bolivarian Republic of Venezuela) recalled that the Special Rapporteur in her report to the Commission on Human Rights on intersections of violence against women and HIV/AIDS (E/CN.4/2005/72, para. 69), had referred to a case of a teenager infected with HIV who had been sterilized without her knowledge or consent at a maternity ward after giving birth to her child. That case was an isolated one, which had occurred in 1997, when different legislation for the protection of minors had been in force, and did not reflect normal practice or Government policy; on the contrary, such acts were punishable under the law. Her Government condemned all such acts and was committed to protecting women, children and adolescents. Current legislation was in conformity with the Constitution and the Basic Act on Protection of Boys, Girls and Adolescents. Victims of abuse had the right to seek redress through the authorities, the justice system and non-governmental organizations. She therefore reiterated the reservations with regard to that paragraph which her delegation had already expressed in the Commission on Human Rights.

53. **Mr. La** Yifan (China) reiterated his Government's support for the work of the Special Rapporteur and asked whether she believed that the work of the Committee on the Elimination of Discrimination against Women should be consolidated with the other treaty bodies in Geneva.

54. **Ms. Ertürk** (Special Rapporteur on violence against women, its causes and consequences) said that she was collaborating with organizations such as the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the Global Coalition on Women and AIDS to identify areas for further cooperation. She was also collaborating with the Office of the United Nations High Commissioner for Refugees and attended briefings both at headquarters and in country; that collaboration had been very helpful with regard to communications received by her. For example, while she was in Turkey she had prevailed on the Turkish

Government to cancel deportation orders against three Iranian women asylum-seekers whose claim had been denied but who said that they could face domestic or other violence if returned to Iran; she had then convinced UNHCR to review their files and two of them had been granted refugee status. She stressed the importance of the communications procedure which was not aimed at exposing the failings of Governments but rather at drawing the attention of Governments and the international community to areas where they could be more diligent.

55. With regard to cultural practices, she said that, generally speaking, violations of women's rights, especially violence against women, were a cross-cutting issue which affected all classes, nations and cultures. Violence against women was a symptom of a culture of oppression and was typical of all oppressive relationships. She intended to publish a report on that specific issue in the hope of drawing attention to and coming to terms with cultural factors which could be obstacles to the elimination of violence against women.

56. She said that following the most recent session of the Commission on Human Rights she had requested the Government of El Salvador to provide its comments regarding her report in writing but to date had received no response. She stressed that her report did not seek to promote abortion but she wished to underscore the need to address the problem of girls and young women who became pregnant as a result of rape or incest, especially if abortion was not an option. The international community and Member States had an obligation to address that problem and establish mechanisms to protect victims and their children, who were also stigmatized because they were illegitimate.

57. She agreed with the representative of Venezuela that the case noted in her report was an isolated one and did not reflect State policy. Even isolated cases should, however, be taken seriously with a view to addressing any problems, not only through formal Government policies but also through additional steps to ensure policies were actually implemented.

58. Although during her tenure as Director of the Division for the Advancement of Women she had opposed the transfer of the Committee on the Elimination of Discrimination against Women to Geneva, she was currently more familiar with the mechanisms in Geneva and could see the merit of closer cooperation with other human rights treaty bodies. There should in fact be closer collaboration between the Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women and greater interaction between Geneva and New York. Closer cooperation between herself and the Committee on the Elimination of Discrimination against Women, which concentrated on women's human rights, and the Commission on the Status of Women, which was a more policy-oriented body, would be most beneficial. Further study was needed on how to strengthen the work of those mechanisms through increased collaboration.

59. **Mr. Aksen** (Turkey) agreed that increased cooperation between the bodies and mechanisms responsible for women's issues would be beneficial and merited consideration but stressed that increased cooperation should strive to make existing mechanisms more effective and should avoid duplication and the creation of new mechanisms. He wondered what the current situation was and how it could be improved.

60. **Mr. Osmane** (Algeria) said the Special Rapporteur was welcome to visit his country and could count on the full cooperation of the authorities.

61. **Mr. Hussain** (Pakistan) expressed concern at the emergence of new types of cultural practices which affected women, such as the trafficking and exploitation of women, including migrant women and women who were undocumented or in irregular situations. He agreed that benchmarks should be established on reducing demand for the women who were victims of such practices but wondered how they could be enforced and whether inspections would be possible in the areas where such practices were common. He inquired if any information was available on abuses against women in those categories, including violence; that entire issue required further study including with regard to States which had ratified relevant international instruments but in which systematic violation of women's rights continued.

62. **Ms. Banzom** (Philippines) stressed the need for the Special Rapporteur to collaborate with other mechanisms of the Commission on Human Rights, such as the Special Rapporteur on the human rights of migrants, including with regard to domestic workers, in order to better understand the issues surrounding violence against women, especially women in the most vulnerable categories.

63. **Ms. Ertürk** (Special Rapporteur on violence against women, its causes and consequences) said that there were few established channels of communication between herself, the Committee on the Elimination of Discrimination against Women and the Commission on the Status of Women, although she had of course addressed the Committee and the various relevant reports were available to each body. She also had an opportunity to interact with other Special Rapporteurs and other treaty bodies at the Meetings of Chairpersons of Human Rights Treaty Bodies but such interaction was at a very general level, and she stressed the need for some direct investment in collaboration mechanisms. She had no direct access to the Commission on the Status of Women although her reports were of course available to it. She suggested that she could be invited to make a report to the Commission.

64. If the Committee on the Elimination of Discrimination against Women was transferred to Geneva, where she was based, direct contact would be facilitated and it would be easier to cooperate in identifying trends and developing strategies to improve the situation of women. During her tenure as Director of the Division for the Advancement of Women she had commissioned a report on the working methods of the Commission on the Status of Women which had recommended increased collaboration between Geneva and New York; however, little had been done to date. Further collaboration would indeed be beneficial to all concerned.

65. She thanked the representative of Algeria for his invitation and said she looked forward to visiting his country. With regard to new practices which affected the rights of women, she reiterated that any culture of oppression of women was a source of violence against women. With regard to phenomena such as trafficking, it was important to try to eliminate the demand, but it was even more important to empower women, thereby ending unequal power structures and discrimination. The elimination of gender inequality would have a powerful effect on all other factors.

66. There were insufficient data on trafficking in women and migrant women. It would be helpful to have closer collaboration with other specialized mechanisms and even to undertake joint missions to countries where trafficking was common or where there were large numbers of migrant women. Trafficking and migration were transnational problems which required States to collaborate to develop new remedies and strategies. She called on all States which had not done so to ratify all relevant conventions, including the International Convention on the Rights of Migrant Workers and Members of Their Families. During country visits she appealed to States to fully implement the Convention on the Elimination of All Forms of Discrimination against Women and urged States which had not yet done so to ratify that Convention so that universal ratification could be achieved by the upcoming thirtieth anniversary of the Convention.

67. **Monsignor Dimaculangan** (Observer for the Holy See), referring to the statement by the representative of El Salvador, said that the Catholic Church did not require constitutional or legislative provisions prohibiting abortion. It was however pro-life and therefore could not recognize the right to abortion. Rather than offering an anti-life option in the case of victims of incest and rape, a better option was to educate men and promote a culture of respect for women among men, with a view to eliminating such abuse.

68. **Mr. Hussain** (Pakistan) said that, while in the long-term empowerment of women and the elimination of gender inequality should resolve the problem of violence against women, it was urgent to also expose the horrific current abuses in situations where the rights of millions to women were being violated.

69. **Ms. Ertürk** (Special Rapporteur on violence against women, its causes and consequences) said that in order to eliminate violence against women, every effort must be made at all levels, not only in the long term but immediately, to change mindsets. Violence against women was an inherently political issue because wherever women were considered to be subordinate or inferior there would be violence. That was at the heart of her theme of the need for due diligence on the part of the authorities and for a political commitment to act decisively and urgently to address the issue of violence against women.

The meeting rose at 5.40 p.m.